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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/224,202	12/30/98	CARLSON	L 3123-233-1

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LM12/0413

EXAMINER

SNIEZEK, A

ART UNIT	PAPER NUMBER
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2753

13

DATE MAILED: 04/13/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/224,202

Applicant(s)

Carlson et al.

Examiner

ANDREW L. SNIEZEK

Group Art Unit

2753



☒ Responsive to communication(s) filed on Feb 15, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 0 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 47-106 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 47-106 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2753

1. The previous restriction requirement is vacated in view of the following restriction requirement. The Petition to withdraw the restriction filed 2/15/00 is deemed moot in view of this action.

2. This application contains claims directed to the following patentably distinct species of the claimed invention: The disclosure presents two flying height determination arrangements as depicted in figures 5 and 8. The figure 5 arrangement is based on comparisons made between signals and the arrangement of figure 8 is based on the number of peaks detected. The arrangement of figure 5 can be used with each of the servo patterns as depicted in figures 3, 6 and 7; with the read signal taking the form as depicted in figure 4. The arrangement of figure 8 can be used with each of the servo patterns as depicted in figures 3, 6 and 7; with the read signal taking the form as depicted in either figure 4 or 9. All together this provides for 9 separate specie in which flying height is determined. These specie are defined by the following groups of figures.

SPECIE 1: Figures 8, 4, 3

SPECIE 2: Figures 8, 4, 6

SPECIE 3: Figures 8, 4, 7

SPECIE 4: Figures 8, 9, 3

SPECIE 5: Figures 8, 9, 6

SPECIE 6: Figures 8, 9, 7

SPECIE 7: Figures 5, 4, 3

SPECIE 8: Figures 5, 4, 6

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SPECIE 9: Figures 5, 4, 7

It is noted that the decreasing signal as depicted in figure 9 is not disclosed as being used with the arrangement in figure 5. If it would have then there would be an additional three species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 2753

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew L. Sniezek whose telephone number is (703) 308-1602.

A.L.S.  
April 12, 2000

*Andrew L. Sniezek*  
**ANDREW L. SNIEZEK**  
**PRIMARY EXAMINER**